

JUDICIAL COUNCIL MEETING

Minutes
Wednesday, July 18th, 2007
Sun Valley, Idaho

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine Durham
Hon. James Davis
Hon. Kevin Nelson
Hon. Gary D. Stott
Hon. Michael Lyon
Hon. Michael Kwan
Hon. Ronald Nehring
Hon. William Barrett
Hon. Robert Hilder
Scott Sabey, esq.
Hon. Hans Chamberlain
Hon. Jody Petry
Hon. Lynn Payne (for Hon. Rand Beacham)

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Tim Shea
Ray Wahl
Holly Frischknecht
Debra Moore

ABSENT:

Hon. Rand Beacham
Hon. Mark Andrus

GUESTS:

Judge Glen Dawson

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Durham)

Chief Justice Durham welcomed the Council to Sun Valley. Judge Rand Beacham and Judge Mark Andrus were excused. Judge Lynn Payne was welcomed in Judge Beacham's place. After reviewing the minutes, the following motion was made.

Motion: Scott Sabey motioned to approve the minutes, Judge Lyon seconded the motion, the motion passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Durham)

Chief Justice Durham reported the following:

- Bob Yeates, Director of CCJJ, Chief Justice Durham, and members of the Bar will present on the judicial selection process during a breakout session for the Bar Conference.
- The Supreme Court has requested that the Policy and Planning Committee review the Court's authority to discipline a pro tem judge based on poor behavior. The Conduct Commission had originally brought the issue to the Council due to their concern over the lack of methods available for addressing punishment for a judge pro tem. The Conduct

Commission felt that since a judge pro tem position is voluntary, they should face a different disciplinary process than a full time appointed judge. The Court questioned what authority they had to discipline a judge pro tem and determined the Council and Policy and Planning Committee should review this issue once again.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker reported the following items:

- Chief Justice Durham has been selected to receive the Rehnquist Award which is the highest honor a state judge can be given. The award will be presented at the Supreme Court by Chief Justice Roberts in November. The Council congratulated the Chief.
- Gary Syphus has been named as the new fiscal analyst for the courts. Mr. Syphus will be learning about the judicial branch and will be working closely with administrative staff.
- Mark May faces Senate confirmation today for the 3rd Juvenile Judgeship.
- The 1st District received 30 applications for their judicial vacancy, and 44 applicants were received for the 2nd District judicial vacancy.
- Nancy Volmer participated on a panel for the National Judicial College and Media Conference. Ms. Volmer discussed media in the courtroom and high profile cases. Kim Allard will be presenting at the Court Information Technology Conference in October on Utah's work with Performance Measures and CourtTools.
- The Judicial Council will meet with the District and Juvenile Board again on Friday morning at 7:30 a.m. with John Baldwin and Gus Chin from the Bar. Justice Nehring will report on the Justice Court Study Committee's progress and an update on the Selection and Retention Task Force will be given.

4. COMMITTEE REPORTS:

Management Committee Meeting:

The Management Committee reported that Ron Bowmaster provided an update on the e-filing initiative and pilot project in the 2nd District. Nancy Volmer also requested to begin distributing press releases from the agenda items that the Council is discussing in order to increase awareness among the public about the issues the judicial branch is facing.

Policy and Planning:

The Policy and Planning Committee did not meet in July.

Bar Commission:

Scott Sabey indicated that the budget and finance committee has recommended an increase in Bar dues in 2008 and 2009. The increase potentially will not be needed that soon, but is in the future plan. The Bar's strategic plan is also in the implementation process and will be discussed during the joint committee meeting on Friday.

5. PRESIDING JUDGE RULE: (Rick Schwermer)

Mr. Schwermer indicated that the Council has now considered the issue of the Presiding Judge Rule at four different meetings. The District Court Bench recently discussed the proposed rule during their annual conference. At that time the bench indicated that if two suggested changes were made, they would be more comfortable supporting the rule. Those changes included clarifying that local supplemental rules must be approved by the bench, not just by a presiding judge in Rule 2-204, and that an appeals process must be created for a judge to challenge a presiding judge decision in Rule 3-104. Mr. Schwermer reviewed the language of these changes with the Council. The comments received during the public comment period were also reviewed. Judge Lyon indicated that if the Boards were able to have more say in the language of the rule, they will have more investment in it.

Judge Payne indicated that the proposed rule allowed the presiding judge to have more power in courtroom assignments than the Board of District Court Judges felt comfortable with. Judge Payne reported that the Rule should clarify that courtroom assignments should be made by the Bench, not the presiding judge. Chief Justice Durham indicated that a local rule can be adopted by the Bench to determine the policy of courtroom assignments that the presiding judge could then enforce.

Chief Justice Durham reviewed the history and process of the PJ Rule and reported on the extensive consideration and time the Council, both Boards, and the presiding judges have spent to consider changes. Chief Justice Durham suggested that the Rule be adopted and tested before sending it back to the Boards for further consideration.

Judge Payne outlined concerns over having a presiding judge send another judge to counseling. Mr. Becker cited examples when the Council has been able to intervene and suggest counseling which helped prevent judges from facing the Judicial Conduct Commission. Having the ability to use counseling has served the judiciary well and has assisted judges during difficult times. Judge Payne also questioned what authority a presiding should have over administrative duties. Justice Nehring reported that the code of judicial conduct governs the actions of a judge and the presiding judge works within those guidelines. The Council discussed that without a Presiding Judge Rule that creates other options, the presiding judge is often forced to take their concerns to the Conduct Commission.

Motion: Justice Nehring motioned to approve the Presiding Judge Rule as drafted and approved by the Management Committee, Scott Sabey seconded the motion.

Discussion took place that the Presiding Judge Rule implies that local rules should be followed.

A vote of the motion took place. The motion passed with twelve in favor. Judge Chamberlain and Judge Lyon opposed the motion. Judge Chamberlain indicated he favored language in a previous draft. Judge Lyon approved the changes to the rule as drafted by Mr. Schwermer.

The Council indicated that the Rule implies district policy governs the presiding judge's action in decisions. The Council will review the rule as needed in the future.

6. CLERICAL WEIGHTED CASELOAD REPORT:(Myron K. March)

Mr. March provided information on the 2007 Clerical Weighted Caseload Committee's suggestions for appropriate clerical time required to process cases in each district. Kim Allard serves as the chair and representatives from every region in the state make up the committee.

This passed year the Committee has worked on identifying the drug court clerical time use in the district court. The Committee also reviewed the 'miscellaneous' case types and determined that 'out of state depositions', 'contempt', and 'arbitration awards' were a significant portion of 'miscellaneous'. A separate case type for each was developed and were implemented the first quarter of 2007. Clerical workload associated with compliance monitoring and management of guardian and conservator post was also reviewed.

The Committee performed ongoing quality checks of the juvenile court data with the new case management system recently implemented. A building block request was developed to study and update the juvenile court clerical weighted caseload. In addition to CARE coming online, the last update was done in 2002.

Mr. March reviewed the Clerical Caseload summary results by district. The 4th District shows they are in need of more clerical support, but once the Provo Justice Court absorbs all the cases they plan to, the 4th District will no longer be understaffed. The committee recommends that no changes be made to the clerical weighted caseload at this time beyond the categorization changes.

The Committee will now review the guardianship and conservatorship projects throughout the districts in greater detail.

7. DRUG COURT RESEARCH: (Rick Schwermer)

Mr. Schwermer indicated that 128 beds have now been opened in the Salt Lake County jail which will create more options for judges. Mr. Schwermer provided a power point presentation on the best practices in drug courts.

Mr. Schwermer indicated that research has now shown that an accurate assessment tool is key to successful outcomes in drug courts. By using the risk and needs test the most effective treatment can be matched to the criminality and level of addiction of a defendant. This tool recognizes that no single treatment is appropriate for all individuals.

DORA will assist in funding the screening and assessment of defendants in order to help sentence accordingly and to create treatment slots that accommodate the needs of drug court participants.

Mr. Schwermer indicated that research has shown delinquency drug courts have not been successful and a compliance court approach often works better with these defendants.

With the improved research, and now with the help of Retired-Judge Fuchs providing training to drug courts statewide, Utah will focus on using good assessment tools, placing individuals in appropriate treatment slots, and re-evaluating our current drug courts.

The Council discussed the difficulty with gaining funding for all defendants to participate in assessments, but recognized how crucial it was to understand their treatment needs. Chief Justice Durham thanked Mr. Schwermer for his presentation and work with drug courts.

8. SARATOGA SPRINGS JUSTICE COURT REQUEST: (Rick Schwermer)

Mr. Schwermer reviewed the history of the Saratoga Springs Justice Court request.

A letter from Saratoga Springs was received stating that they continue to have an interest in forming a court despite earlier communication that they had no plans to proceed with starting a court. Although no progress has been made to begin a court, they would like approval to move forward with opening a court in October without having to go through the request process again. Mr. Schwermer indicated the main concern with creating and maintaining these time-lines is to help manage judicial needs with other courts impacted. Saratoga Springs is now questioning if their application lapsed and they have to reapply, or can they extend the current application in order to open a justice court.

The Council determined a more formal request will be made to Utah County regarding the impact a justice court in Saratoga Springs would have on them.

Motion: Justice Nehring motioned that the Council seek Utah County's position on Saratoga Spring's Justice Court request opening in October. The application will be reconsidered when more information is available. Judge Stott seconded the motion, the motion passed unanimously.

9. JUVENILE COURT GRANTS: (Ray Wahl)

Mr. Wahl provided information on the grant sources the juvenile courts are currently using. The juvenile court utilizes justice assistance grants, juvenile accountability block grants, court improvement project grants, and VOCA grants. The goals of the Juvenile Board were also provided to outline how the grants support the Board's initiatives.

The juvenile law clerk, assessment instrument, and statewide training are funded through the justice assistance grants. PO/DPO safety training and management training, court programs evaluation and improvement, and delinquency guidelines model court programs are funded through block grants. Mr. Wahl indicated that because of Mr. Becker's influence, these block grants are now available to the juvenile court where they haven't been in the past. Court Improvement Project grants fund CIP data collection and analysis, CIP training, and the Court Improvement Project. The victim coordinators in 1st, 4th, 7th and 8th District are funded by VOCA grants.

Mr. Wahl reported that by being informed about where and how grant funds in the juvenile court are being utilized, the Board better understands how their goals are supporting

these funded programs. Chief Justice Durham indicated how beneficial it is for the Board to clearly tie juvenile goals to the grants they are receiving and how it assists the Board in actively managing the progress in the juvenile court. The Chief thanked Mr. Wahl and the Board of Juvenile Judges for their leadership and active participation in the administration of the juvenile bench.

10. JUVENILE COURT REPORT CARD INITIATIVE: (Ray Wahl)

Mr. Wahl reported that the Juvenile Court is preparing to provide a juvenile report card to the public that explains how the juvenile court is doing in areas the community is concerned about. This report card will be published in the Deseret News and the Salt Lake Tribune. The items reported will be:

- restitution owed and paid
- community service hours ordered and performed
- percentage of youth with negative drug test results while in probation
- percentage of youth with no new offense within one year after the initial offense
- percentage of youth in school or employed at case closure
- crime-victim survey rating satisfaction with system's intervention
- number of youth committed annually to custody
- per capita rate of juvenile offenders
- number and percentage of juveniles waived to adult court
- percentage of youth completing a diversion agreement or probation term

Examples of other states efforts to report on their juvenile courts were provided. This report will be a valuable way to involve the community in the progress of the juvenile court and help educate them on the process and practices of the juvenile court.

11. APPROVAL OF CERTIFICATION LETTER TO MAYOR: (Tim Shea)

Mr. Shea provided the Council with an example of the letters municipal mayors will receive regarding the justice court judges the Council has previously certified.

Motion: Judge Stott motioned to approve the letter as provided to the Council. The motion was seconded and passed unanimously.

12. ETHICS ADVISORY INFORMAL OPINION 07-2: (Tim Shea, Judge Dawson)

Mr. Shea reported that the 2nd District has requested the Council review an Ethics Advisory Committee informal opinion stating a referee cannot practice criminal law in the district they referee cases in. Judge Dawson, presiding judge in the 2nd District, indicated that because the referee was not allowed to practice criminal law after this opinion, he will not be able to continue his position as referee. Judge Dawson indicated the referee has served the county diligently and the district greatly benefits from having a law trained referee. Mr. Johnson provided a memo that further addressed the appearance of impropriety of a referee practicing law in the district he works in, given the referee is a state employee. All judges in the district would be required to disqualify themselves when the referee serves as counsel.

The Council discussed the advisory opinion and the difficulty of attracting a law trained referee if they are unable to practice in the district of their employment. After reviewing the appearance of impropriety, the following motion was made.

Motion: Judge Stott motioned that the Council adopt the Ethics Advisory Committee's recommendation and request that the Committee release it as an informal opinion, Judge Hilder seconded motion, the motion passed with Judge Kwan and Judge Nelson opposing.

13. LEGISLATIVE AUDIT ON SURCHARGES, FINES AND COSTS: (Rick Schwermer)

Mr. Schwermer indicated that Legislative Audit recently concluded a surcharge, fines and costs audit. It was suggested that some justice courts need additional training on assessing surcharges. The audit recommended that all justice courts use one case management system, which they are in the process of converting to.

The audit also addressed the court complex fund has been depleted by the Legislature. It is anticipated that expenses from the court complex account remain between \$4 and \$4.3 million per year, however, in recent years the revenue into the account has decreased to less than \$4 million per year. At this rate, the account will not be able remain solvent through fiscal year 2008. The decrease in revenue is partially due to the increased number of justice courts which divert funding from the court complex account away from the state to local government entities. The Council recently voted to put additional money available from turnover savings into the court complex fund to help it be solvent for another 5 years. The audit also recommended that the courts detail the reason for specific fees being charged.

During the Legislative report of the audit, the Audit Committee recognized the complex fee solution was only a temporary fix and noted more money would needed. Mr. Schwermer indicated that this is an extremely positive audit and the issues that arose were already being addressed.

14. PROPOSED AMENDMENT TO CJA RULE 10-1-303: (Rick Schwermer)

Mr. Schwermer stated that the statute authorizing the Expedited Parent-time Enforcement program provided for in UCA 30-3-38 appears to have been inadvertently sunseted. Mr. Schwermer has worked with Senator Bell to revise the statute. During the next legislative session as an interim measure, it was recommended that the program be authorized by Rule pending legislative action.

Motion: Judge Stott motioned to approve the proposed amendment regarding the Expedited Parent-time Enforcement program, UCA 30-3-28, effective immediately, and if possible retroactively. Judge Chamberlain seconded the motion. The motion passed unanimously.

15. PRE-LEGISLATIVE SESSION PLANNING: (Daniel J. Becker)

Mr. Becker reported it was time for the Council to begin discussion about whether to rely on the Citizen's Committee for salary increases, or to fall in line with employees increase in the future.

The Council determined that utilizing the Citizen Committee again in some form would be useful. Mr. Becker reported that both the Board of District and Juvenile Judges have raised the concern about clerk compensation, but the Council determined they should pursue employee raises separately from judicial salaries.

Mr. Becker reported that the National Center for State Court's website indicates the following general jurisdiction judicial salaries for western states.

- Utah's is \$125,850
- Idaho's is \$110,280
- Wyoming's is \$109,800
- Colorado's is \$118,973
- New Mexico's is \$110,820
- Arizona's is \$135,800
- Nevada's is \$130,000
- Oregon's is \$95,800
- California's is \$171,648
- Montana's is \$94,093
- Western state average is \$120,000

Mr. Becker indicated that the Citizen's Committee is willing to move forward in requesting a judicial salary increase during the upcoming Legislative session. The Council discussed inviting additional members to join the Committee and asked the Chief and the Management Committee to further review potential community members. The Council also discussed the importance of focusing on employee salary increases.

Chief Justice Durham will contact Mr. Cornaby and Mr. Anderson and possibly one other person to determine if they can begin work on the Citizen Committee once again. Chief Justice Durham requested that suggestions of a third person to serve on the Committee would be helpful.

16. ADJOURN

The meeting was adjourned.